



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 926 of 2005**

2. Land and Environmental Law Division

Subject of main suit:- Land

Adverse Possession

LR Muguga Kahuho/T.14

3. Plaintiff 1 and 2 are mother and son.

a. Claim to be on suit land since

1958 Plaintiff No.1

1976 Plaintiff No.2

b) Land originally owed by Wairore Kamengu

4. Defendant acting in person

a. Failed to make claim

b. PM CC No.6/05 suit filed for eviction in Kikuyu

c. Suit time barred.

5. Held:

i) Non disclosure of Land Tribunal award

j) P.M. Mis application No.6 of 2005

Magistrate court at Kikuyu evicting the one Njoroge George Gakima from land

iii) Caution to Land removed

6. Case law- Nil

7. Advocates:-

A. Oyalo for A.O. Oyalo & Co. Advocates for the plaintiff

Esther Wanjiku Kinyanjui the defendant in person

**ZIPHORAH WAMBUI NJOROGE .....1<sup>ST</sup> APPLICANT**

**WILLIAM NJOROGE .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ESTHER WANJIKU KINYANJUI .....DEFENDANT**

**JUDGMENT**

1. Background

1. This suit touches on the issue of land LR Mugugua/Kahuho/714 in which Ziphorah Wambui Njoroge ( a female adult) and her son William Njoroge (born in 1976) claim to have been occupying the suit property by way of Adverse Possession.

2. That in 1958 Ziphorah Wambui Njoroge entered onto the suit land then occupied by Wairore Kemenju. She seeks, together with her son, Adverse Possession having been on the suit land for over 12 years.

3. The defendant Esther Wanjiku Kinyanjui holds title to the land. She acts in person and came into this file when an application for judgment summarily prayed for 8 September 2005 was filed against her by the then advocate for the plaintiffs M/s Mbiyu Kamau & Co. Advocates.

4. The application was dismissed on 24 November 2006 by Mugo J. The defendant was given leave to file her reply to the Originating Summons.

5. In her defence she claimed that there was material non disclosure by the plaintiff. There existed other suits that had dealt with this same matter before this court.

6. By now the plaintiff had changed advocates and engaged the services of M/s O.A. Oyalo & Co. Advocates. Directions had been given by Mugo J

(28 April 2006) that parties would address the court by way of affidavit evidence. On the day of trial the defendant failed to attend court. Under order IXb r 3(a) Civil Procedure Rules the hearing proceeded.

7. The issues before court is whether the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff are entitled to Adverse Possession?

II Adverse Possession

8. The advocate for the plaintiff prayed the plaintiffs and her son be given adverse possession having occupied the suit land with the defendant's knowledge. There was under order XXXVI r 3 D Civil Procedure Rules an extract of the green card – property section. It showed that on 7 August 1997 the plaintiffs had placed a caution on the land.

9. According to the defendant's documentation, in 1988, she applied for registration of title without the original title for land. That there was a dispute lands tribunal case (no number was disclosed) in

which the elders ordered the eviction of one Njoroge George Gakima. This decree was dated 24 February 2006.

10. The defendants stated in her affidavit that the said plaintiff were sued in the magistrates court PMCC 6/2005 to vacate the said property. She admitted there was a succession court case which the plaintiff 1 and 2 should have participated in and did not. The 2<sup>nd</sup> plaintiff had moved out of the property. The 2<sup>nd</sup> plaintiff came into the property when the 1<sup>st</sup> plaintiff had moved out. When the plaintiffs realized they were to be evicted from the land they filed this suit, the defendant saw this action as malicious. Further Wairore Kimangu was not her late father but one Kinyanjui.

### III: Finding

11. The plaintiff failed to disclose that there were succession cause, the PMCC case and the Disputes Tribunal case on trespass. That whether she was effected with the said orders of eviction is unclear. Her relationship to the deceased owner is also unclear.

12. I decline to issue orders of Adverse Possession on grounds of non-disclosure of material facts.

13. This suit stands dismissed. There will be no orders as to costs as the defendants was absent.

Dated this 19<sup>th</sup> day of June 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

A. Oyalo for A.O. Oyalo & Co. Advocates for the plaintiff

Easther Wanjiku Kinyangui the defendant in person